



State of Connecticut
GENERAL ASSEMBLY
STATE CAPITOL
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February 26, 2015

Testimony of Senator Beth Bye, Representative Brian Becker, Representative Andrew Fleischmann, and Representative Joseph Verrengia to the Joint Committee on Insurance and Real Estate
SB 239 An Act Prohibiting Certain Exclusions From Automobile Insurance Policy

Senator Crisco, Representative Megna, Senator Hartley, Representative Zoni, Senator Kelly, Representative Sampson, and members of the Committee on Insurance and Real Estate:

The West Hartford delegation would like to thank you for the opportunity to submit testimony in support of SB 239. This issue came to our attention from a constituent who had personally witnessed the adverse effects of lack of clarification in the nullification provision to Connecticut General Statutes §31-293a.

This statute, which has been on the books since 1967, created an exception to the exclusive remedy of the Workers Compensation Act to permit employees to bring action against other employees in cases where there are injuries sustained in motor vehicle accidents.

After its passage, insurers began denying coverage for these claims pursuant to an employee vs. employee exclusion in their policies. To combat this, the Connecticut General Assembly amended §31-293a two years later in 1969. It is §4 of Public Act 696.

According to the legislative history, §4 was intended to amend the situation that had been created by the insurance carriers who intentionally refuse to cover employers in cases regarding the operation of employers' vehicles by their employees.

The legislative history indicates that §4 was "designed to correct the situation which has been created by the insurance carriers who deliberately refuse to cover the employers with respect to the operation of their vehicles by their employees. This proposal would nullify the provision that does not provide for complete coverage of the employers, including the operation of such vehicles by the employers' employees." See Connecticut General Assembly House Proceedings 1969 Vol. 13 Part 8 at 4011 (May 26, 1969).

During the Senate Proceedings, Senator Miller further explained that the amendment "[m]akes mandatory that no injury insurance policy covering an automobile accident can any longer

exclude actions by fellow employees against each other..." See Connecticut General Assembly Senate Proceedings 1969 Vol. 13 Part 7 at 3111-3112 (June 2, 1969).

Although the intent was there to cover employers for claims of this nature, the nullification provision has been interpreted by insurance carriers to be limited to primary insurance policies that insure the minimum level of compulsory automobile insurance, \$20,000, as identified in General Statutes §14-112. As a result of this narrow interpretation, employers who have excess or umbrella insurance policies above self-insured coverage or the minimal primary coverage as dictated by §14-112 are penalized by §31-293a.

There have been two cases in Connecticut that did not uphold the intent displayed in the legislative history of Public Act 696 to provide complete coverage. These cases include Universal Underwriters Ins. Co. v. Paradis, a case that went to the Connecticut Supreme Court in 2008 and City of New Haven v. Insurance Co. of Pa.

In the second of these cases, the City of New Haven was denied coverage for claims between two police officers involved in a fatal collision in a 2012 Connecticut federal court case. The court deferred to the Supreme Court's holding in the Paradis case. Neither court considered or relied upon the legislative history of the statute.

The purpose of this proposed bill is to amend this situation that has impacted employers in both of these cases and that of our constituent who was affected by a 2012 incident in West Hartford. West Hartford had a claim involving an automobile collision between two police officers. The Town was ultimately forced to fund an approximately \$300,000 settlement because its insurance company adopted this narrow interpretation of the statute. Other employers in Connecticut may be in the same boat and not even know the problem exists.

This bill will amend the nullification provision so that it will:

- 1) Apply to any and all policies of insurance that may be relevant as a result of a claim pursuant to §31-293a.

Changes in the insurance marketplace and the costs of claims since 1969 make this amendment a crucial change.

While the proposed language is well drafted, we urge the Committee on Insurance and Real Estate to adopt the proposed substitute language submitted by Attorney Melissa Federico. The current nullification provision is contained within §31-293a under the Workers Compensation Act. Senate Bill 239's new nullification language was removed from Title 31 and instead placed in Title 38a which deals exclusively with automobile policies. In light of the fact that there are multiple insurance policies that may apply to the employee vs. employee exception (such as excess and umbrella), we agree that the new language should be placed back in §31-293a.

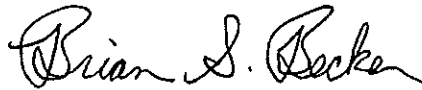
Placing the new language back in a single location (§31-293a) will make it clearer that it is applicable to all types of policies to reflect the way the insurance marketplace works today. The language should also be changed to "No insurance policy" as opposed to "No automobile

insurance policy” to be consistent with the legislative history. Without this substitute language, insurers may continue to narrowly interpret the new nullification provision as only being applicable to basic primary automobile policies. Such an interpretation would effectively defeat the purpose of the proposed legislation. We believe this substitute language accomplishes the original intent of the legislature.

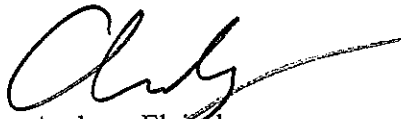
Thank you,

A handwritten signature in black ink, appearing to read "Beth Bye".

Beth Bye

A handwritten signature in black ink, appearing to read "Brian S. Becker".

Brian Becker

A handwritten signature in black ink, appearing to read "Andrew Fleischmann".

Andrew Fleischmann

A handwritten signature in black ink, appearing to read "Joseph Verrengia".

Joseph Verrengia

